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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/739,857	12/18/2000	James D. Hansa	40002-10083	4208

7590 03/29/2004

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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/29/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/739,857

Applicant(s)

HANSA ET AL.

Examiner

Helen F. Pratt

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1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7,17,18,20-30,32,33,35,38-41,46-51 and 53-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6,7,18,20-25,27-29,32,33,35-39,50-53 and 60 is/are rejected.
- 7) ☒ Claim(s) 30, 48, 54-57, 58, 59 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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The allowance of the claims has been withdrawn due to the submission of a new reference by the Applicants.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Tetra Werke (DE 3006158) (Tetra).

Tetra discloses as in claims 1, 4 and 6 an uncooked food product which contains uncooked oat groats which has a vitamin mixture absorbed onto the oat groats which are then dried at amounts within the claimed amounts (page 2, 4th para.). The vitamins are seen to have been water dispersible as they are among the items claimed.

The use of trace elements as in claim 7 which are considered to be minerals is disclosed on page 2, 5th paragraph.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 17, 18, 20-25, 27-29, 32, 33, 35-49, 50-53, 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tetra Werke (DE 3006158) (Tetra).

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Claim 3 further requires that the groats are whole. However, no criticality is seen in the use of whole groats, as the specification discloses both whole and cut oats. The reference uses whole oats, which are then fragmented. If one did not want increased absorbability, then it would have been obvious to use whole oats. Therefore, it would have been obvious to use whole oat groats if desired.

Claim 17 further requires tempering the food and optionally equilibrating the food with the aqueous infusion mixture. However, the specification discloses on page 92nd para. that tempering is conventional. Therefore, it would have been obvious to temper the oats and to equilibrate or not in the process of Tetra.

Claim 18 further requires drying the oats to a desired moisture content. Tetra discloses drying the oats at 50 C back to their original water content (page 2, para. 4). Therefore, it would have been obvious to dry the oats in the process of Tetra to make the claimed product.

Claims 20-25, 28, 29 further require various processing limitations which have been discussed above or which are processing limitations well within the skill of the ordinary worker such as dissolving materials before applying the mixture and various drying steps using known apparatus. Therefore, it would have been obvious to use known processing steps in the claimed process.

Nothing new is seen in equilibrating in a storage bin as in claim 26, as some type of container is required to hold the oats. Therefore, it would have been obvious to dry in some type of container.

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Claim 27 further requires drying the oats to a desired moisture concentration prior to the step of infusing the liquid. However, nothing new is seen in this step as the oats have to be at some degree of dryness. Certainly, some degree of dryness is required to keep the oats from forming mold and mildew. Therefore, it would have been obvious to dry to a particular moisture content.

Claims 32 and 33 further require particular vitamins and minerals. However, these are well known ingredients, and nothing new is seen in the use of any of the particular vitamins or minerals absent a showing of unobvious results. Therefore, it would have been obvious to use known vitamins and minerals in the claimed composition.

The limitations of claims 35-49, 50, 52 and 60 have been disclosed above and are obvious for those reasons.

Certainly, as in claims 51 and 53 adding a vitamin or mineral mixture in water is a fat free procedure. Therefore, it would have been obvious to infuse with a fat free mixture in the claimed process.

Allowable Subject Matter

Claims 30, 48, 54-57, 58, 59 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP 3-23-04


HELEN PRATT
PRIMARY EXAMINER